

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 25 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0178-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
HENRY WILLIAM COON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20070394

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Mark C. Bockel

Tucson
Attorney for Petitioner

K E L L Y, Judge.

¶1 Pursuant to separate plea agreements involving offenses committed in December 2006 and January 2007, petitioner Henry Coon was convicted of two charges of aggravated driving under the influence of intoxicating liquor while his driver license

was suspended. At a consolidated sentencing hearing, the trial court imposed a mitigated term of 1.5 years in prison for Coon's December 2006 offense and a consecutive, presumptive prison term of 2.5 years for his January 2007 offense.¹

¶2 Coon filed a timely notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. In the petition that followed, Coon argued his presumptive sentence in the January 2007 case was excessive because the same facts were offered in mitigation as for the mitigated 1.5-year sentence. In an order summarily denying relief, the trial court explained there was a "situational difference" between the two offenses, noting that the December 2006 offense had been Coon's first felony and, as Coon himself had acknowledged at the sentencing hearing, he should have learned from that arrest. Instead, he committed a similar offense only weeks later. Coon has filed a petition for review of the court's decision, repeating the same arguments he raised below without addressing the sound legal reasoning found in the court's ruling.

¶3 We review a trial court's denial of post-conviction relief for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). And, if a sentence imposed is within statutory limits, we will not disturb that sentence "unless there is a clear abuse of discretion." *State v. Ward*, 200 Ariz. 387, ¶ 5, 26 P.3d 1158, 1160 (App. 2001). We find no abuse of discretion here. The court clearly identified and resolved the issue Coon raised, and its ruling will be understood by any court in the future. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¹According to his petition for review, Coon also was convicted and sentenced pursuant to a plea agreement involving a third aggravated DUI offense committed in May 2007. That conviction and sentence are not relevant to his claim for Rule 32 relief.

Because the court's findings and conclusions are supported by the record before us, we see no purpose in rehashing the court's order here and, instead, we adopt it. *See id.* Accordingly, although we grant Coon's petition for review, we deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge